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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

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No. 443

CHARLOTTE C. WORLEY, DEBTOR,

Petitioner,

vs.

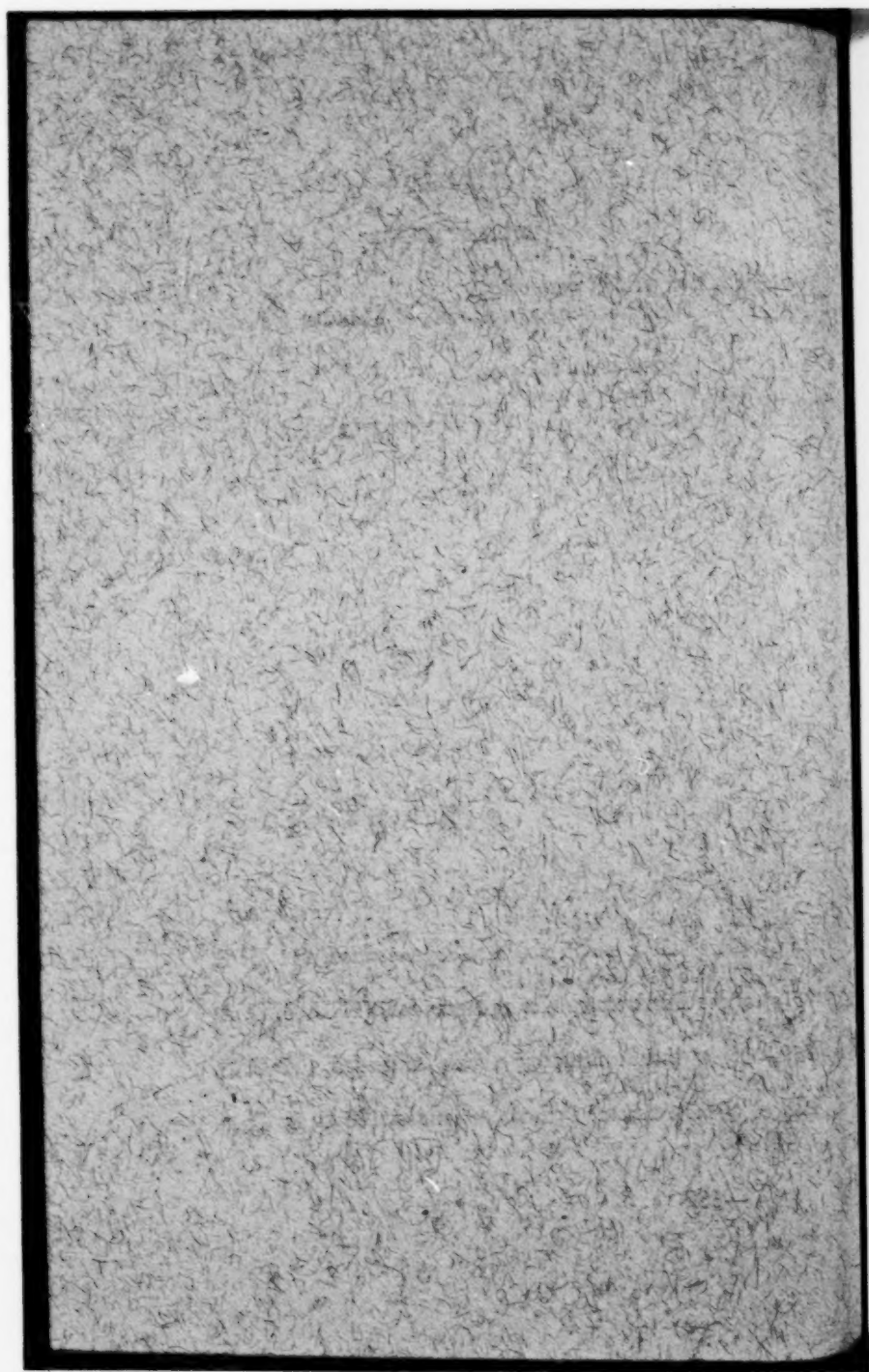
CHARLES W. WAHLQUIST, FRANCIS M. WHITLOCK, AS ADMINISTRATOR OF THE ESTATE OF SARAH E. WHITLOCK, DECEASED; AMERICAN BANKERS INSURANCE COMPANY, A CORPORATION; THE OMAHA NATIONAL BANK, A CORPORATION, TRUSTEE; ROBERT L. SMITH; AND OAK PARK TRUST AND SAVINGS BANK, TRUSTEE, SECURED CREDITORS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

W. C. FRASER,
C. F. CONNOLLY,
GROFDOF, FRASER, CONNOLLY &
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1945

No. 443

CHARLOTTE C. WORLEY, DEBTOR,
vs. *Petitioner.*

CHARLES W. WAHLQUIST, FRANCIS M. WHITLOCK, AS ADMINISTRATOR OF THE ESTATE OF SARAH E. WHITLOCK, DECEASED; AMERICAN BANKERS INSURANCE COMPANY, A CORPORATION; THE OMAHA NATIONAL BANK, A CORPORATION, TRUSTEE; ROBERT L. SMITH; AND OAK PARK TRUST AND SAVINGS BANK, TRUSTEE, SECURED CREDITORS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Charlotte C. Worley, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals, Eighth Circuit, in the above cause,

designated in said court as No. 12960, wherein this petitioner was appellant and the respondents appellees.

I

Judgment and Opinion of Circuit Court of Appeals

Said judgment was entered on August 8, 1945.

The opinion of the court below is not yet reported, but is found on pages 301 to 308, inclusive, of the transcript of record in this cause, certified to on the 29th day of August, 1945, by E. E. Koch, Clerk of the United States Circuit Court of Appeals, Eighth Circuit, herewith submitted.

II

Jurisdiction Statement

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended (28 U. S. C. A. 347(a)).

III

Questions Presented

The questions presented by this petition for writ of certiorari are:

1. Under Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), does a farm debtor have the right to make settlement outside of court with some of the secured creditors whereby such secured creditors waive payment of rent which would be otherwise due under the rental order of the court?

2. Under said Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), can a farm debtor be held to be contumaciously delinquent under the rental or-

der, so as to justify the court in terminating the stay provided by said Act for a failure of the debtor to comply with the orders of the court, where the farm debtor has produced a statement from a part of the secured creditors that they are willing to waive their share of the rents, which would otherwise be due them under said rental order, and such farm debtor has offered to pay into court the amount of the rentals due the remaining secured creditors, who have not so waived?

3. Under said Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), can a farm debtor be held to be contumaciously violating the orders of the court when such debtor has made outside settlements and financial arrangements as to rents and as to redemption with friendly secured creditors without obtaining prior approval of the court?

4. Under said Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), does the court have judicial discretion to refuse to permit the farm debtor to make redemption at the value fixed by the initial and sole appraisal, where such debtor has petitioner for such right from the time such appraisal was made and was confirmed by the court continuously thereafter, and has never been accorded an opportunity to redeem at such initial and sole appraisal, although she has caused funds therefore to be deposited into court.

5. Under said Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), is it proper for the court to deny the farm debtor the right to redeem at the initial and sole appraisal where the delay in making redemption was due to no fault of the farm debtor?

6. Under said Section 75(s) of the Bankruptcy Act, as amended (11 U. S. C. A. 203(s)), do the secured creditors

have an absolute right to insist that the debtor be required to redeem at a value determined by a reappraisal and to deny the debtor any opportunity to redeem at the value fixed by the initial and sole appraisal?

IV

Short Statement of the Matter Involved

Miss Worley, the petitioner herein, owns a large ranch in Box Butte County, Nebraska, consisting of 2,960 acres which she herself farms. This ranch is composed of a number of different legal subdivisions and each legal subdivision was mortgaged under a separate mortgage to different secured creditors. The debtor also owns some hay land in Sheridan County, and lands in Dawes County, Nebraska, which are leased to tenants and which were separately mortgaged. The respondents here are but a part of such total number of secured creditors. The respondents hold mortgages on different legal subdivisions constituting a part of the debtor's total property. The debtor has made arrangements for settlement with the remaining secured creditors, which arrangements have been made outside of court.

Although the debtor had requested an appraisal of her property at the time she filed her amended petition on April 18, 1939, no appraisal was had. The debtor thereupon on January 23, 1942, filed a further request for an appraisal stating that she desired to redeem the property at its appraised value, the property never having been theretofore appraised. She prayed that the court cause her property to be appraised to the end that she immediately pay the value thereof and reacquire same. The court thereupon appointed appraisers who finally under dates of May 21, 1942, and June 18, 1942, filed their appraisal of the prop-

erty. No other appraisal has ever been ordered or made. To the appraisal certain secured creditors, the respondents herein, filed exceptions; and, after hearing, an order was entered by the court on August 6, 1942, overruling and denying the respondents' exceptions. No appeal was taken. Then on August 12, 1942, the debtor filed a request that the court fix the time and terms of payment of the appraisal. This request was denied by the court on January 23, 1943. The secured creditors, who owned all of the mortgages other than those held by the respondents herein, had several months before, filed their acceptances of the appraisal and signified their willingness to permit redemption by the debtor at such appraised amount.

On January 23, 1943, the court referred the matter to the Conciliation Commissioner for the fixing of rental for the three year statutory stay. The order of the Conciliation Commissioner fixing rent was filed February 19, 1943. The order staying proceedings for three years was entered by the court on February 22, 1943. Thereafter on September 4, 1943, the respondents herein filed request for reappraisal, upon which no action has ever been taken.

On September 27, 1943, the respondents filed an application to terminate the stay alleging that the petitioner was in default on the payment rent under the rental order of the court. This application prayed that the court appoint a trustee and that the trustee proceed to sell the property subject to the right of redemption of the debtor. To this the debtor filed an answer and cross petition wherein she denied default in the rent order. Petitioner alleged that she had made settlement with all of the secured creditors, other than the respondents herein, for the rents and that such remaining secured creditors were not requesting that any rents be paid into court for them. The debtor further alleged that she had been trying to redeem for a long

period of time and that redemption had been delayed by reason of excessive demand of the secured creditors, respondents herein. The debtor again demanded that the court fix the time and terms for redemption under the appraisal. To this the secured creditors, respondents herein, filed a reply admitting that they had demanded that the debtor pay all delinquent rents before she could redeem and stating further that the debtor could not make redemption without granting to them a reappraisal of the properties.

The secured creditors, other than the respondents herein, filed a petition alleging that the debtor had made arrangements with them to redeem her lands and had made arrangements with them in satisfaction of any rents due. Such secured creditors prayed that the court enter an order fixing and determining the time and terms for redemption under the appraisal.

At the trial in the district court on December 6, 1943, the debtor tendered into court the amount of the initial and sole appraised value of the tracts of real estate upon which the respondents herein held their mortgages, and the debtor further offered to pay the rent due the respondents. The other secured creditors filed written waivers of any right to share in such tenders. The respondents herein objected to the redemption tender, alleging the same was premature and that a reappraisal must first be had and alleging further that the debtor was not entitled to redeem unless the rents for 1943 and prior years had been paid in full.

Thereafter the district court entered four orders as follows: First, an order finding that the debtor was in default of the payment of rent for the year 1943 and that the accounting and tender made by the debtor in open court at the time of hearing was not sufficient; and ordering that, unless the debtor accounted for all rents due within fifteen days, the stay shall be terminated and a trustee

appointed and the real estate upon which respondents held their liens should be sold by said trustee. Secondly, the court order denied and refused the debtor's tender for redemption. Third, the court dismissed the petition of the bankrupt to redeem. Fourth, the court entered an order reserving final ruling upon the application of the secured creditors, respondents, for reappraisal.

The orders of the district court were all affirmed by the Circuit Court of Appeals, except that court reversed the order directing the property to be sold if the debtor failed to comply with the rental accounting order. The Circuit Court of Appeals ruled that the trial court must first grant a reappraisal or fix the value of the real estate on a hearing and give petitioner a reasonable opportunity to make redemption thereafter before the property should be ordered sold at public auction.

V

Reasons Relied Upon for the Allowance of the Writ

1. This case presents important questions with respect to the procedure required by Section 75(s) of the Bankruptcy Act as amended (11 U. S. C. A. 203 (s)).

2. The decision of the Circuit Court of Appeals deprives a farm debtor of the right and opportunity to make compromise settlements with secured creditors so as to provide for the debtor's financial rehabilitation.

3. The decision of the Circuit Court of Appeals appears to establish the rule that the secured creditors can in any and every case prevent the farm debtor from redeeming at the initial appraisal.

4. The construction by the Circuit Court of Appeals of Section 75(s) of the Bankruptcy Act makes meaningless the provisions of said Act giving the farm debtor a right to

redeem at the appraised value, and adopts a construction of said Act which in effect renders wholly nugatory and illusory any opportunity on the part of the farm debtor to redeem at the value fixed by the appraisal provided by said Act.

5. The decision of the Circuit Court of Appeals does violence to the reasoning of this Court and the rules laid down by this Court in the case of *Wright v. United Central Life Insurance Co.*, 61 S. Ct. 196, 311 U. S. 273, 85 L. Ed. 184, 44 Am. Bankr. Rep. (N. S.) 280.

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

W. C. FRASER,

C. F. CONNOLLY,

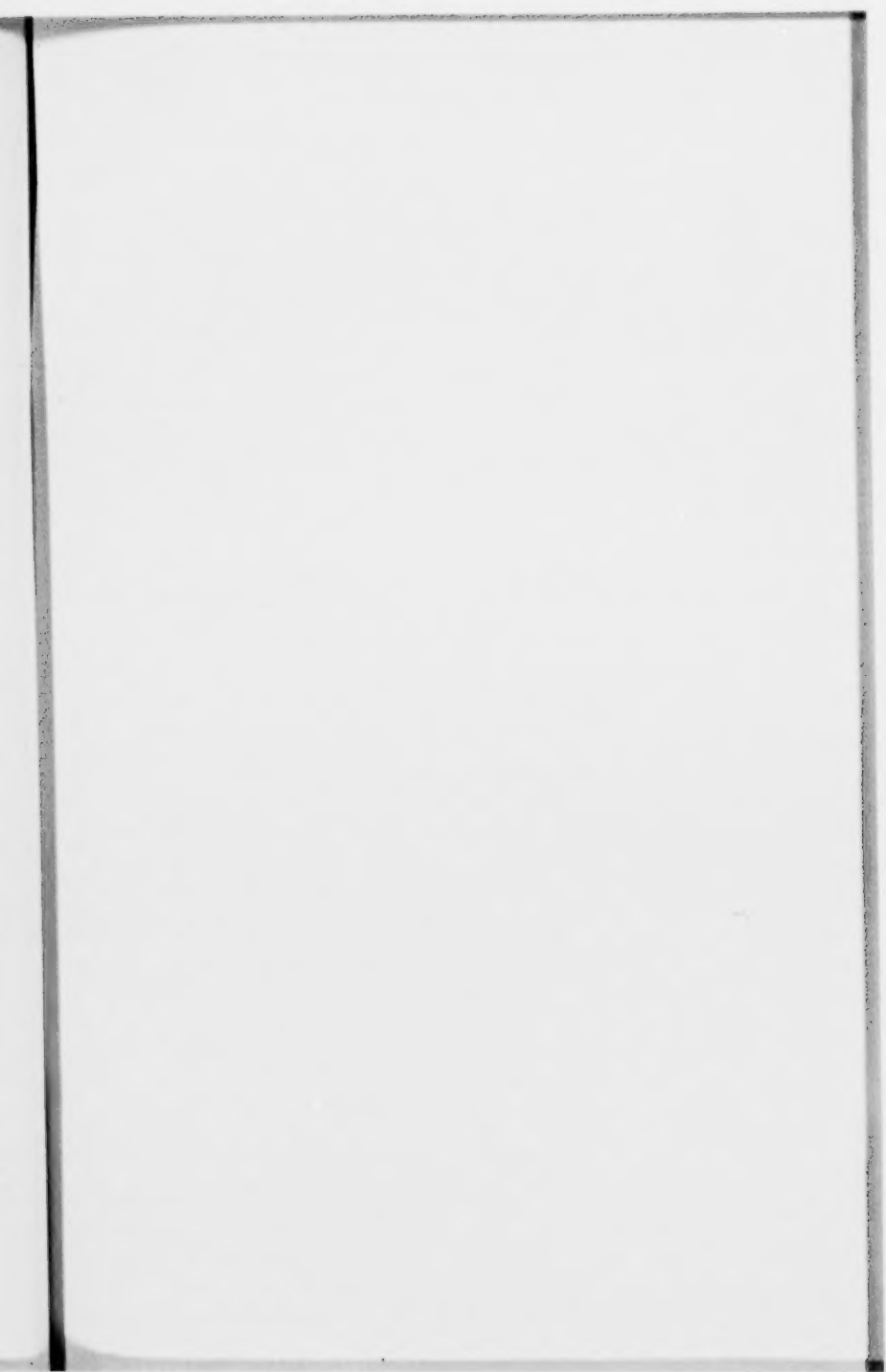
CROFOOT, FRASER, CONNOLLY &

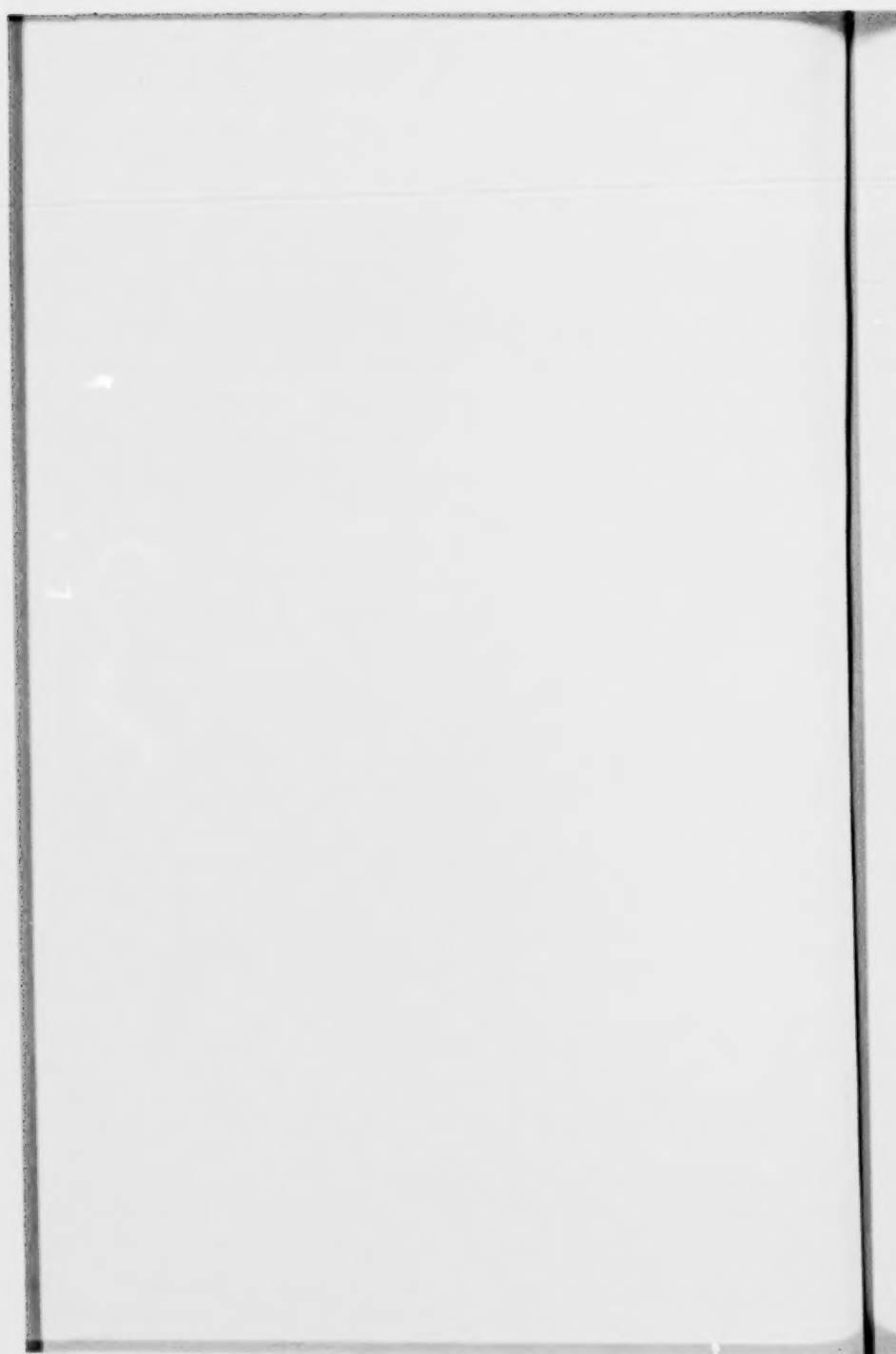
STRYKER,

Counsel for Petitioner, Charlotte

C. Worley, Debtor.

Dated: September 21, 1945.





IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 443

CHARLOTTE C. WORLEY, DEBTOR,
Petitioner,
vs.

CHARLES W. WAHLQUIST, ET AL., SECURED CREDITORS

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI**

Opinion Below

The opinion of the court below, not yet reported, is found on pages 301 to 308, inclusive, of the transcript of record in this cause certified to on the 29th day of August, 1945, by E. E. Koch, Clerk of the United States Circuit Court of Appeals, Eighth Circuit, herewith submitted. The judgment of the said court complained of was entered on the 8th day of August, 1945.

Jurisdiction of This Court

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended (28 U. S. C. A. 347(a)).

Statement of the Case

A short statement of the case follows:

Miss Worley, the petitioner herein, owns a large ranch in Box Butte County, Nebraska, consisting of 2,960 acres which she herself farms. This ranch is composed of a number of different legal subdivisions. Each subdivision was mortgaged under a separate mortgage to different secured creditors. The debtor also owns some hay land in Sheridan County and lands in Dawes County, Nebraska, which are leased to tenants and separately mortgaged. The respondents here are a part of her secured creditors. The respondents held mortgages on different legal subdivisions, constituting a part of the debtor's total property. The debtor has made arrangements for settlement with the remaining secured creditors. Such arrangements have been made outside of court.

Although the debtor had requested an appraisal of her property at the time she filed her amended petition on April 18, 1939, no appraisal was had. The debtor, on January 23, 1942, filed a further request for an appraisal stating that she desired to redeem her property at its appraised value, the property never having been theretofore appraised. She prayed that the court cause her property to be appraised to the end that she immediately pay the value thereof and reacquire it. The court thereupon appointed appraisers who finally under date of May 21, 1942, and June 18, 1942, filed their appraisal of the property. No other appraisal has ever been ordered or made. The secured creditors, the respondents herein, filed exceptions to the appraisal amount, and, after hearing, an order was entered by the court on August 6, 1942, overruling and denying respondents' exceptions. No appeal was taken from such order. Then on August 12, 1942, the debtor filed a request

that the court fix the time and terms of payment of the appraisal, but this request was denied by the court on January 23, 1943. On September 16, 1942, all the other secured creditors, who owned all of the mortgages other than those held by the respondents herein, had filed their acceptance of the appraisal and signified their willingness to permit redemption by the debtor at the appraisal amount.

On January 23, 1943, the court referred the matter to the Conciliation Commissioner for the fixing of rental for the three years' statutory stay. The order of the Conciliation Commissioner fixing rent was filed February 19, 1943. The order staying proceedings for three years was entered by the court on February 22, 1943. Thereafter, on September 4, 1943, the respondents herein filed separate requests for reappraisal, but have never brought such matter up for hearing.

On September 27, 1943, the respondents filed a joint application to terminate the stay, alleging that the petitioner was in default on the payment of rent under the rental order of the court. This application prayed that the court appoint a trustee and that the trustee proceed to sell the property subject to the rights of redemption of the debtor. To this the debtor filed an answer and cross-petition, wherein she denied default in the rent order. She alleged that she had made settlement with all of the secured creditors, other than the respondents herein, for the rents, and that such remaining secured creditors were not requesting any rents be paid into court for them. The debtor further alleged that she had been trying to redeem for a long period of time and that redemption had been delayed by reason of excessive demands of the secured creditors, respondents herein. The debtor again demanded that the court fix the time and terms for redemption under the appraisal. To this the secured creditors, respondents herein, filed a reply admitting that they had demanded that the debtor

pay all delinquent rents before she could redeem and stating further that the debtor could not make redemption without granting to them a reappraisal of the properties.

The secured creditors, other than the respondents herein, filed a petition alleging that the debtor had made arrangements with them to redeem her lands and had made arrangements with them in satisfaction of any rents due. Such secured creditors prayed that the court enter an order fixing and determining the time and terms for redemption under the appraisal.

By proper pleadings, and at the trial in the district court on December 6, 1943, the debtor tendered and caused to be paid into court the amount of the initial and sole appraised value of the tracts of real estate upon which the respondents herein held their mortgages, and the debtor further offered to pay the rent due the respondents. The other secured creditors filed written waivers of any right to share in such tenders. The respondents objected to the redemption tender, alleging the same was premature and that a reappraisal must first be had and alleging further that the debtor was not entitled to redeem unless the rents for 1943 and prior years had been paid in full. The debtor petitioned the court for an order granting her redemption of her real estate and the assigning of said property to her. Objections to this petition for redemption were filed by the respondents.

Thereafter the district court entered four orders as follows: First, an order finding that the debtor was in default on the payment of rent for the year 1943 and that the accounting and tender made by the debtor in open court at the time of hearing were not sufficient; and ordering that, unless the debtor accounted for and paid all rents due within fifteen days, the stay shall be terminated and a trustee appointed and the real estate upon which respondents held their liens should be sold by said trustee. Secondly, the court order denied and refused the debtor's

tender for redemption. Third, the court dismissed the petition of the bankrupt to redeem. Fourth, the court entered an order reserving final ruling upon the application of the secured creditors, respondents, for reappraisal.

Petitioner appealed to the Circuit Court of Appeals, Eighth Circuit, from said orders, and the Circuit Court of Appeals held that the order of the trial court terminating the stay was erroneous to the extent that it directed a sale of the real estate in the event of the failure of the debtor to account for the rents without first directing a reappraisal, and granted the debtor a reasonable opportunity to redeem at an amount to be determined by a reappraisal. In all other respects all the orders of the district court were affirmed by the Circuit Court of Appeals.

Specifications of Error

It is respectfully urged that the Circuit Court of Appeals, Eighth Circuit, erred in this cause as follows:

1. In holding that the debtor, the petitioner herein, was in default on the payment of rents due under the order of the court, when the petitioner had produced a waiver of rents from a part of the secured creditors and had offered in open court to pay the rents due to the non-waiving secured creditors, the respondents.

2. In holding that a farm debtor is guilty of a contumacious violation of the orders of the court under Section 75(s) of the Bankruptcy Act, as amended, (11 U. S. C. A. 203(s)), when such debtor has made outside settlements and financial arrangements for payment of rent with some of the friendly secured creditors, without obtaining the prior approval of the court thereto.

3. In holding that, under the circumstances here involved, the farm debtor did not have a right to redeem her real

estate at the value fixed at the initial and sole appraisal, when, through no fault of the debtor and because of the improper demands on the part of the secured creditors, the farm debtor had been denied any opportunity to redeem at such value.

4. In holding that the secured creditors have an absolute right under Section 75(s) of the Bankruptcy Act, as amended, (11 U. S. C. A. 203(s)), to prevent a farm debtor from making redemption at the value fixed at the initial and sole appraisal simply by such creditors filing a demand for reappraisal.

5. In holding that the mere filing of request for reappraisal by a secured creditors, in proceedings under Section 75(s) of the Bankruptcy Act, as amended, (11 U. S. C. A. 203(s)), would deprive a farm debtor of an opportunity to redeem at the value fixed at the initial and sole appraisal; and that such request for reappraisal would remain pending indefinitely, until such time as the secured creditors would call same up for hearing, and thereby prevent the debtor from making redemption except at the time determined by such secured creditors.

ARGUMENT

Specifications Nos. 1 and 2 Regarding Rentals

The rental order of the court required the debtor to pay certain rents, the exact terms of which are not important here. This rental order was entered February 19, 1943, and the first rents would be due in the fall of 1943. It was the finding of the trial court, affirmed by the Circuit Court of Appeals, that the debtor was in default on the payment of such rents. While a number of items are alleged to constitute the default, the entire controversy hinges upon the question as to whether the debtor had a

right to file a waiver from some of the secured creditors and take credit for the amount so saved on the payment of the rentals. The debtor had offered to fully comply with the order of the court and make full accounting, and would have done so had she been given credit for the amount due to certain of the creditors, who had waived their claims to the rent. The question here presented therefore is simply whether a farm debtor can make private arrangements with a portion of her secured creditors to thereby save the rents which would be otherwise payable by the debtor under the rental order of the court. If the debtor is entitled to make such arrangements with any portion of her secured creditors, then the order here is clearly erroneous; but if the debtor is not entitled to make such an outside settlement, then the finding that the debtor was in default on the payment of rents is clearly correct.

It would seem that no citation of authority would be necessary to establish the proposition that the secured creditors could waive their share of the rents and thereby the debtor be relieved of the obligation to pay the amount so waived. Section 75(s)(2) of the Bankruptcy Act, (11 U. S. C. A. 203(s)(2)), provides:

“ * * * the court shall stay all judicial or official proceedings in any court, * * * against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semi-annually for that part of the property of which he retains possession. * * * Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. * * * ”